

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

RALPH BAKER,

Petitioner,

v.

MICHELLE R. RICCI, et al.,

Respondents.

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Civil Action No. 09-3654 (KM)

MEMORANDUM AND ORDER

In July 2009, pro se petitioner Ralph Baker filed a consolidated petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 seeking to challenge separate convictions in Union and Middlesex Counties.¹ DE 1. In September 2013, I granted Baker a protective stay to exhaust potential remedies in state court. DE 48, 49. I later denied Baker's requests to reopen the proceedings, finding each time that he had not exhausted his state remedies. DE 65, 67, 69, 77, 87, 89. In a letter filed June 30, 2023, Baker again requested that the proceedings be reopened, and indicated that he had exhausted his state remedies. DE 90–92. As it was not clear whether the claims were fully exhausted, I directed respondents to respond and (1) set forth their position as to whether Baker's claims are fully exhausted, and (2) include an update detailing the procedural history of Baker's case since I stayed this matter. DE 93.

Thereafter, on August 2, 2023, Baker filed a document entitled "Motion for Extension of the Record and Deception on Federal Rule 51K on Assistance to the Government." DE 94. This submission does not appear to request any action or ruling from the Court.

¹ Baker is no longer in custody for the Union County conviction. DE 75 at 2. In October 2018, the Union County trial court granted Baker's motion for a new trial. DE 75-2; DE 75-3. Thereafter, upon the prosecutor's motion, the trial judge dismissed the Union County charges. DE 75-4.

In a letter filed August 23, 2023, respondents provided the Court with a detailed procedural history of Baker's state court proceedings since I entered the stay in September 2013, and advised that "petitioner's direct appeal in state court is completed." DE 98 at 7. Accordingly, in light of Baker's request to lift the stay (DE 90) and respondents' representation that Baker's state court appeal is completed (DE 98), I will grant Baker's request to lift the stay and reopen his habeas proceedings.

Respondents also request that I direct Baker to file an amended habeas petition because (1) the petitions he submitted in 2009 were filed before he returned to state court and filed his direct appeal from the judgments entered in Middlesex and Union Counties; (2) his later amendments were filed during the pendency of his appeal in state court; and (3) the Union County judgment of conviction, in effect when Baker filed his petitions in 2009, was vacated after his motion for a new trial was granted and the underlying indictment was thereafter dismissed. DE 98 at 8. I agree with respondents that an amended petition is necessary, as Baker's petition contains grounds for relief that are no longer viable, including those related to the Union County conviction, which has now been vacated. DE 6. Accordingly, I will direct Baker to file an amended petition, on the proper form, setting forth his remaining grounds for relief.

Because I am directing Baker to file an amended petition, his "Motion for Extension of the Record and Deception on Federal Rule 51K on Assistance to the Government" (DE 94) will be denied as moot. Baker may file any appropriate motions after he has filed his amended petition.

Accordingly, IT IS this 24th day of August, 2023

ORDERED that Baker's request to lift the stay and reopen his habeas proceedings (DE 90) is GRANTED; and it is further

ORDERED that Baker's "Motion for Extension of the Record and Deception on Federal Rule 51K on Assistance to the Government" (DE 94) is DENIED; and it is further

ORDERED that, within 30 days of the date this Order is entered, Baker shall file an amended petition, on the form required by Local Civil Rule 81.2, (AO 241 (modified): DNJ-Habeas-008(Rev.01-2014)); and it is further

ORDERED that the Clerk of the Court shall forward Baker a blank habeas petition form (AO 241 (modified): DNJ-Habeas-008(Rev.01-2014)); and it is further

ORDERED that the Clerk of the Court shall serve a copy of this Order on Baker by regular U.S. mail.

/s/ Kevin McNulty

Kevin McNulty
United States District Judge